

Jenny A. Kitchings, Clerk
South Carolina Court of Appeals
P.O. Box 11629
Columbia, S.C. 29211

January 15, 2014

Case No: 2013-000919

Honorable Jenny A. Kitchings:

At Lee C.I. we've been on lock-down for a flu epidemic and the law library has been closed. I was unable to make copies of the only copy of the original prose brief.

Wherefore, may I please have a copy of the enclosed documents forward to Salley W. Elliott, Assistant Attorney General and a clock stamp copy forwarded back to me for my records please.

With Kind Regards,
S/ Nathaniel Kenna

cc: Salley W. Elliott, Asst.
Atty. General

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JAN 22 2014

SC Court of Appeals

Jenny Abbott Kitchings, Clerk
S.C. Court of Appeals
P.O. Box 11629
Columbia, S.C. 29211

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OCT 9 7 2013

SC Court of Appeals

October 3, 2013.

Case No: 2013-000919

Dear Ms. Kitchings, Clerk:

Please excuse my un-notarized documents. The headmaster mailroom lady would not notarize my hand written motion.

And I was not allowed to have over (3) copies because of my indegency of my account.

Wherefore, I hope that my Brief of Appeal is accepted because I am not familiar with how many pages are allowed and exhibits, but I tried to explain my case at the best of my ability.

cc: Filed

cc: Salley W. Elliott, Asst.
Attorney General

Sincerely,

S/ Nathaniel Glenn Jr.
Nathaniel Glenn Jr. #303563

Lee C.I.
990 Wisacky Hwy.
Bishopville, SC. 29010

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JAN 22 2014

SC Court of Appeals



State Of South Carolina
In The Appellate Court

Appeal From Greenville County
Honorable Letitia H. Verdin, Judge

The State, Respondent,
vs.
Nathaniel Glenn, Jr., Appellant.

Initial Brief of Appellant

Case No: 2013-000919

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JAN 22 2014

SC Court of Appeals

Nathaniel Glenn, Jr. #303563
Lee C.I.
990 Wisacky Hwy.
Bishopville, S.C. 29010

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OCT 07 2013

SC Court of Appeals

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Statement of the Issue on Appeal

Whether the lower court erred in concluding that Petitioner is not entitled to have an evidentiary hearing upon his Rule 29(b) motion for after-discovered evidence of false testimony given by the States witnesses under Oath; due to failure to file his appeal of Rule (29) within (10) days after his trial.

Whether the Petitioners Fourteenth Amendment Constitutional Right of Due Process of Law was violated once the lower court refused to grant his hearing of a non-statutory limitation issue when there is fraud upon the court that had enabled the jurors to weigh-out the inconsistencies and falsehoods of the two main witnesses testimony.

Statement of Case

The Petitioner, Nathaniel Glenn, Jr., is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court of Greenville County. The Petitioner was indicted for trafficking cocaine, indictment number 2002-65-23-6529. It alleges that Glenn did in Greenville County on or about August 2, 2002, traffick cocaine. He was represented by James Goldsmith, Esquire, on July 13, 2004. Glenn proceeded to a jury trial and was found guilty of trafficking cocaine. He was then sentenced to (27) years (85) percent.

A Notice of Appeal was filed on the Petitioners behalf at the South Carolina Court of Appeals. The Petitioner had chosen to withdraw his Appeal. The Court issued the Order of Dismissal and Remittitur on June 23, 2005.

Petitioner filed an application for (PCR) on February 20, 2006, (docket no. 2006-CP-23-1230). The State made its Return on or about May 2, 2006. Petitioner filed a subsequent amendment to his application dated June 26, 2006, in which he alleged several instances of ineffective of trial counsel.

After the denial of his (PCR) hearing, the Petitioners attorney filed a motion to alter or amend the judgment which was denied January 18, 2008, by the Honorable G. Edward Welmaker, Judge for the Thirteenth Judicial Circuit.

A Notice of Appeal was filed on January 24, 2008, with the South Carolina Supreme Court. The South Carolina Supreme Court issued its Orders on May 28, 2009. The Remittitur followed on June 15, 2009.

On August 18, 2009, Petitioner filed a writ of Habeas Corpus raising four grounds for relief. On January 13, 2010, the Respondent filed a motion for summary judgment.

By Order filed January 14, 2010, Petitioner was advised of Summary Judgment Dismissal procedure and the possible consequences if he failed to adequately respond to the motion.

Petitioner failed to respond to the Motion and the Court filed an Order on February 24, 2010, giving him another opportunity, through March 22, 2010, to file his response.

On April 5, 2010, the Petitioner moved for an extension of time, which was granted through April 22, 2010. The Petitioner filed his Response in opposition to the Motion for Summary Judgment on April 5, 2010, and submitted additional attachments in support of his Response on April 9, 2010, May 14, 2010 and June 8, 2010. May 28, 2010, he filed an affidavit in support of his response and on June 28, 2010.

On July 22, 2010, the Honorable Kevin F. McDonald, United States Magistrate Judge recommended that the Respondents Motion for Summary Judgment be granted. The recommendation was granted and the Appeal to the United States Court of Appeals for the Fourth Circuit, on August 18, 2009. April 26, 2011, his appeal was dismissed by unpublished per curiam opinion and a Certificate of Appealability denied.

On or about the month of May 2011, the Petitioner filed a motion for Rule 29(B) for a New Trial based on after-discovered evidence in the court of General Sessions that was clock-dated stamped copied and filed on May 19, 2011.

July 2011, his family hired attorney Tommy Thomas to amend further evidence towards his original motion that was filed May 19, 2011.

January 14, 2013, his attorney filed an amended motion to the Clerks office of Greenville County. March 19, 2013, the State filed a motion to dismiss his amended motion. April 9, 2013, the Honorable Letitia H. Verdin, Judge, dismissed the amended motion.

April 22, 2013, his attorney filed a Notice of Motion to Alter or Amend to the Petitioner's Original Filed Motion on the date of May 19, 2011. July 13, 2013, Petitioner filed a Pro Se Motion Designation of Matter to the Clerks office of Greenville County and the Court of Appeals.

August 14, 2013, his attorney Tommy Thomas mailed a copy of the denial order from Judge Letitia H. Verdin.

July 10, 2013, the Honorable Letitia H. Verdin denied his motion to Alter or Amend. July 25, 2013, the Order of Denial was filed before the Greenville County Clerks Office.

September 12, 2013, he was notified by attorney Tommy Thomas that ~~his~~ case does not meet the requirements of the Indigent Defense and he has (30) days to complete his Brief to the Appellate Courts. (as here), Petitioner has completed the aforementioned Brief to the best of his ability.

Argument I

Whether the lower court erred in concluding that Petitioner is not entitled to have an evidentiary hearing upon his Rule 29(b) motion for after-discovered evidence of false testimony given by the States two main witnesses under oath, due to the failure to file his appeal of Rule 29 within 10 days after his trial.

The Petitioner submits that the clerk's files of the confidential informants criminal history record, the informants testimony and the detectives testimony on July 13, 2004, amounts to after-discovered evidence under Rule 29(b) SCRCrimP, became a due process violation under both the State and Federal Constitution under State vs. Spann.

During the course of the Petitioners judicial process he was deprived of due process. He was never found with any drugs, nor money that belonged to the narcotic agency and the only witness who identified him as being the culprit was the informant.

The informant and the detective along with the solicitor misled the court in its entirety, into thinking or assuming that the Petitioner was the higher-up dealer of the informant's arrest of cocaine the summer of 2002, as stated amongst the trial transcript. And that statement of false testimony under oath from the two main witnesses was the fruit of the states offense leading to his arrest and conviction.

The Petitioner has the burden of proving that the grounds raised in his motion for Rule 29(b), SCRCrimP., could not have been raised in any previous appeals, because his case involves "unique" factual circumstances. And the after-discovered evidence of material facts states the opposite language of the witnesses trial testimony, which had a significant impact on the jury's verdict.

The herein allegations present a "unique" combination of facts and unusual circumstances which warrants review. Thus, Petitioner should not be punished for the actions and inactions of his appointed attorneys throughout his judicial process. It is generally preferred that a blameless party not be disadvantaged (as here) by the procedural errors or neglect of his attorney. Harris vs. U.S. RR Retirement Bd.

The Petitioner is alleging after-discovered evidence due to the conduct of State officials and the informants. That such conduct amounts to fraud upon the court, denial of a fair trial and false testimony under Oath. See, Washington vs. State, and Giglio.

The Petitioners trial transcripts bears out the allegations before the Court are submitted as exhibits in support thereof. Each numbered page indicated shows where the detective and the informant committed fraud under Oath by false testimony. Where The Law Holds: Where the attorney failed to correct the witness false testimony, although she clearly (as here) knew it to be false.

The Supreme Court held that false testimony used by the State in securing the conviction may have had an effect on the

outcome of the trial and accordingly, reversed the defendant's conviction. *Id.* at 272, 79 S.Ct. 1173 Napue vs. Illinois. In the instant case, the State attorney failed to correct the false testimony and she repeated the witnesses falsehood during her summation.

Argument II

Whether the Petitioner's Fourteenth Amendment Constitutional Right of Due Process was violated once the lower courts had refused to grant his evidentiary hearing of a non-statutory limitation issue, when there is fraud upon the court that had enabled the jurors to weigh-out the inconsistencies and falsehoods of the witnesses testimony.

The allegations set forth below presents a Prima Facie Violation of Petitioner's Constitutional Rights. Rogers vs. State. The allegations in the motion must be accepted as true unless and until successfully refuted. Blandshaw vs. State. On the Matter of Sub Judice, the Petitioner is alleging after-discovered evidence that warrants a New Trial and/or Vacation of his Conviction. To prevail on this claim the Petitioner "must show that the after-discovered evidence: (1) is such that it would probably change the result if a New Trial were granted; (2) has been discovered since the trial; (3) could not in the exercise of due diligence been discovered prior to trial; (4) is material; and (5) is not merely cumulative or impeaching. State vs. Needs.

The Petitioner's defense was prejudiced by both the detective and informant's trial testimony by the following material of after-discovered evidence:

- (1) detective and informant's testimony on record stated that the informant was arrested for distribution of cocaine the summer of 2002. March 6, 2002, his arrest warrant stated the informant was charged with methamphetamines. (exhibit on record);
- (2) detective testified that the informant had pending charges on the date of August 2, 2002, as the video footage was being played before the jurors during trial. May 20, 2002, the informant charges were dismissed. (exhibit on record); and
- (3) informant's crime laboratory report from the result of his arrest on March 6, 2002, stated "No Control Substance Detected" on March 25, 2002. (exhibit on record)

The State's witness, detective Lawson testified that the informant was arrested for cocaine to persuade the jurors that the Petitioner was the higher-up dealer of an ongoing conspiracy of the informant's arrest. (Trp. 25, 26 and 44).

The material evidence of the witnesses testimony and the Solicitor's summation that were made under Oath, prejudiced the Petitioner's defense and violated the following S.C. Code of Laws:

- (1) S.C. Code Ann (16-9-10)(A)(1) "It is unlawful for a person to willfully give false, misleading, or incomplete testimony under Oath in any Court of Record, Judicial, administrative, or

regulatory proceeding in this State"; and

(2) S.C. Code Ann (16-9-30) "It is unlawful for a person to willfully and knowingly swear falsely in taking any Oath required by law that is administered by a person directed or permitted by law to administer such Oath."

The State witnesses misleading testimony had prejudiced the Petitioner's defense, Berger vs. United States, "It is as much [the solicitor's] duty to refrain from improper methods calculated to produce a wrongful conviction as it is to use every legitimate means to bring about a just one." (as here) The Petitioner's trial transcripts bears out the allegations before the Court as an exhibit in support thereof of fraud being committed under Oath.

The Supreme Court held that the false testimony used by the State in securing the conviction may have had an effect on the outcome of the trial, and accordingly, reversed the defendants conviction. Napue vs. Illinois, in the instant case, the solicitor failed to correct the perjury and repeated the witnesses falsehood in his summation. (see trial transcripts), The Supreme Court reversed the defendants conviction because there was reasonable likelihood that the attorney's knowing use of perjury on an issue so relevant to the witness credibility affected the judgment of the jury. Giglio.

Thus, the grant of a New Trial based upon Napue, violation is proper only if (as here) (1) the statement in question are shown to be actually false; (2) (as here) the attorney knew that they were false; and (3) (as here) the statements were material. Blackburn vs. United States, and United States vs. O'Keefe.

Wherefore, the Petitioner urges this Court to consider his claim of after-discovered evidence and the following testimony and exhibits upon the record that are being presented that could not be presented prior to trial, sentencing, and his post conviction hearing; of informant Teasley's arrest report and drug analysis findings. See, Johnson vs. Catoe, (Waller J., dissenting) Quoting: Butler vs. State.

Conclusion

Based upon the following cases and authorities of law, the Petitioner states that upon the delayed disclosures of after-discovered evidence, there was an inability to effectively cross-examine the witnesses testimony.

He also states that the issues of fraud upon his case were timely filed. There is no statute of limitations when a party seeks to set aside a judgment due to fraud upon the court. Chewning vs. Ford Motor Co.

Party making a motion for relief from judgment has the burden of presenting evidence proving the facts essential to entitle him to relief. McClurg vs. Deaton.

The movant in a motion for relief from judgment on basis of mistakes, inadvertence, excusable neglect, newly discovered evidence, or fraud has the burden of presenting evidence proving the facts essential to entitle her to relief. BB & T vs. Taylor.

Thus, resulted (as here) the Petitioner was denied a fair and unambiguous trial by the solicitor, detective and informant because of fraud upon the Court.

Therefore, the lower courts order denying the Petitioners Motion for New Trial should be Reversed and his Hearing be Granted to prove his essential facts that would entitle him to relief.

Respectfully Submitted,
S/ Nathaniel Glenn Jr.
Nathaniel Glenn, Jr., Petitioner
Lee C.I.
990 Wisacky Hwy.
Bishopville, S.C. 29010

Sworn to and subscribed before
me this _____ day of _____ 2013

Notary Public of South Carolina
My Commission Expires _____.

State Of South Carolina
In The Appellate Court

Appeal From Greenville County
Honorable Letitia H. Verdin, Judge

The State, Respondent,
vs.
Nathaniel Glenn, Jr., Appellant.

Certificate of Service

The undersigned hereby certifies that a true copy of his Initial Brief in the above referenced case has been served upon Salley W. Elliott, Esquire and the Honorable V. Claire Allen, Clerk by depositing (3) copies of it in the U.S. Mail; postage prepaid on the date of September 30, 2013.

sworn to and subscribed before me
this ____ day of _____, 2013.

Notary Public of South Carolina
My Commission Expires _____.

S/ Nathaniel Glenn Jr.
Nathaniel Glenn, Jr. #303563
Lee C.I.
990 Wisacky Hwy.
Bishopville, S.C. 29010

Salley W. Elliott, Esq.
Assistant Atty. Gen.
P.O. Box 11549
Columbia, S.C. 29211

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OCT 07 2013

SC Court of Appeals

Proof of Service

I certify that I have served the ~~at~~ Designation of Matter to the Honorable Jenny Abbott Kitchings, Clerk of S.C. Court of Appeals, at S.C. Court of Appeals, P.O. Box 11629, Columbia, S.C. 29211, to the Honorable Letitia H. Verdin at 305 East North Street, suite 318 and Solicitor Joyce K. Monts at 305 East North Street, suite 325, Greenville S.C. 29601 by depositing a copy of it in the U.S. Mail postage prepaid, on August 1, 2013.

Date: August 1, 2013

s/ Nathaniel Klemke

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AUG 08 2013
SC COURT OF APPEALS

The State Of South Carolina
Court of General Sessions

Letitia H. Verdin, Circuit Court Judge

Case No: 2002-GS-23-6529

State of S.C., ----- Respondent,

vs.

Nathaniel Glenn Jr., ----- Defendant.

Designation of Matter

To Be Included In The Record on Appeal
Appellant proposes the following to be included in the Record on Appeal:

1. May 19, 2011, clock-dated stamp filed copy of Rule 29(b) Motion at the Greenville County Clerk of Court
2. Exhibits along with Motion filed
3. Trial transcripts pages 25, 26, 35, 39, 40, 44, 47, 54 and 74
4. List of letters and Motions in Chronological Order of the multiple attempts made after trial and after Nov. 13, 2007 (PCR) hearing, to try and recover unknown Brady Evidence.

I certify that this Designation contains no matter which is irrelevant to this Appeal.

Date: July 31, 2013.

RECEIVED

AUG 08 2013

Court of Appeals

Nathaniel Glenn Jr.
Nathaniel Glenn Jr. # 503563
Lee C. I.
990 Wisacky Hwy.
Bishopville, S.C. 29010

Below for the record are a list of letters and motions that were written to Greenville County Clerk's Office, Solicitors Office, and several officers of the Court in chronological order.

I had written over (75) letters and motions, I could only recover (35) copies from my personal files and I mailed them to Mr. Tommy Thomas, Esquire. Most of the other copies were destroyed or lost through-out the years of institutional shakedowns.

1. Sept. 3, 2004 - request to Clerk of Court Office for Discovery Material
2. Oct. 21, 2004 - second request for Discovery Material
3. Nov. 16, 2004 - made third request for Discovery Material
4. Nov. 17, 2004 - motion for appointment of Counsel
5. April 19, 2005 - motion for Summary Judgement to receive hearing for Appointment of Counsel to recover Discovery Material
6. May 2, 2005 - letter to Federal Attorney For Discovery material related to State Case
7. August 3, 2005 - request for any Discovery Material related to conviction indictment to the Greenville Clerk's Office
8. Oct. 3, 2005 - letter to Lt. C. Todd of SLED for Discovery material about certification of Chemist James Armstrong
9. May 18, 2006 - notarized letter to Attorney Rodney Richey for request of evidence I never had.

10. Sept. 18, 2006 - request to Attorney Rodney Richey of Brady - Audio and Video Surveillance
11. Sept. 12, 2006 - letter to Judge Taylor reference to seek out Brady Material before Preliminary Hearing
12. Sept. 28, 2006 - letter to Attorney Rodney Richey for Brady Material
13. Sept. 2006 - Response to letter from Preliminary Hearing Coordinator, Donna Bearden
14. Nov. 20, 2006 - letter to Clerks Office requesting Brady Material related to conviction
15. Jan. 31, 2007 - letter to Preliminary Hearing Coordinator for specific Brady Material
16. March 23, 2007 - letter to Atty. Susan Ross for the request to recover all Brady Material
17. November 28, 2007 - notarized letter to PCR Atty. Susan Ross about altered evidence of Audio and Video surveillance
18. January 2008 - letter to Robert Arrial, Head Solicitor for evidence of video material - Brady Original Copies
19. January 14, 2008 - letter to Property and Evidence Custodian Tony Vinskus - reference to Audio and Video Surveillance
20. January 14, 2008 - letter to Property and Evidence Custodian Jessica Jordan - reference to Audio and Video Surveillance
21. February 4, 2008 - notarized letter to Capt. Jinny Moran for a completely signed Property and Evidence sheet - reference to Audio and Video surveillance
22. February 7, 2008 - Notification of Reconsideration to Judge Welmaker Pro Se

23. February 14, 2008 - letter to Judge Welmaker reference to surveillance tape
24. February 19, 2008 - Amended Motion to Judge Welmaker
25. March 12, 2008 - Motion of 60(b), SCRPC to common Pleas Court
26. April 7, 2008 - letter to Kenneth Richstad, Clerk
27. April 7, 2008 - letter to Honorable Daniel Shearouse
28. December 12, 2008 - letter to Solicitor Joyce Monts
29. November 24, 2009 - request for Brady Material from Records Supervisor of Greenville County Public Safety
30. April 7, 2010 - letter to Barbara Scott Clerk of Columbia County Courthouse
31. April 26, 2010 - letter to PCR Atty, Susan Ross
32. May 6, 2010 - letter to Rodney Richey in need of complete file of Brady
33. May 10, 2010 - letter to Solicitor Joyce Monts for complete Brady File
34. May 10, 2010 - letter to Judge Hill requesting for Order to subpoena Brady File from Solicitor Joyce Monts
35. June 23, 2010 - letter to Solicitor Joyce Monts requesting phone record that state witness Detective Lawson testified that she had subpoenaed with my name upon it.

cc: Filed
cc: Honorable Jenny Abbott Kitchings
cc: Honorable Letitia H. Verdin
cc: Solicitor Joyce K. Monts

s/ Nathaniel Allen Jr.

State of South Carolina

Court of General

County of Greenville

Sessions

Nathaniel Glenn Jr. #303563]

Petitioner.]

Motion To Amend

To Rule 29 (b)

Vs.]

Motion Of New Found

State of South Carolina.]

Evidence

Respondent.]

2002-GS-23-6529

The above named Petitioner would respectfully move this court to Amend the following Motion of New and Exculpatory Evidence that contradicted the State's account of the incident's Chain of Custody to his Rule 29 (b). based on the following:

Due towards the New Found Evidence of the VHS video tape Chain of Custody Issue. State vs. Williams. 301 s.c. 369.392 S.E.2d 181 (1990). (a complete chain of custody must be established as far as practicable). The State has not established a practical chain of custody of the video tape which was a critical item used to convict the Petitioner.

Detective Lawson testified that she made a copy of the 8mm video tape and put it on a VHS tape for VCR. Trp.35. Detective Lawson testified that the wire that the informant was wearing was recorded separately onto a floppy disk. Trp. 35.

Detective Lawson testified that they had originally recorded the video with a 8mm camera, hand held in the back seat of the vehicle by Detective Bobby Carias. Trp. 35 and 40.

Detective Lawson testified she obtained the VHS video tape fromm the Property and Evidence room that morning before trial, Trp. 39.

The first review of the two incomplete evidence sheets that was received several years after the Petitioners trial from (PCR) Attorney Rodney Richey, did not indicate the time frames when Det. Lawson testified that she possessed the evidence up until the date of July 13, 2004. Exhibit (B-1).

May 12, 2008. Petitioner received two complete evidence sheets that indicated Det. Lawson had possession of the Sony minidisc TDK 8mm tape, and the Sony audio cassette (phone call). From the date of February 17, 2004 until February 19, 2004, but the evidence sheet does not indicate, nor reveal the deposit of a VHS video tape. Exhibit (B-2).

The evidence sheet indicates a broken chain of custody by the following:

February 17, thru February 19, 2004. Det. Lawson signed out the audio and video surveillance for court, but there was not a subpoena ordered for the Petitioner to appear for trial. Next, there was not any discovery of an affidavit allowing the detective to join together the audio and video to alter, rerecord, enhance, duplicate, and change from its original form to persuade the jurors to decide a guilty verdict, then denied the Petitioner the right to examine the original recordings before they were destroyed.

And last, there was no whereabouts of the VHS video tape deposited upon the property and evidence sheets. A review of the property and evidence sheets indicated the detective had possession of the evidence several days under her own authority from the dates of February 17, thru February 19, of 2004.

Proof of chain of custody need not negate all possibility of tampering so long as the chain of possession is complete. *State vs. Carter*. 344 S.C.419.544S.E.2d.835 (2001). Here, the chain is not complete and does not negate the possibility of tampering. In applying the Rule, the court found evidence is admissible only where there is a missing link in the chain of possession because the identity of those who handled the evidence. *State vs. Cribb*. 310S.C.518.426E.E.2d306(1992). There is a missing link in the chain of possession of the audio and video surveillance, as Det. Lawson has not identified accurate possession of the VHS tape to prevent possibility of tampering, nor can possibility of tampering be negated due to the lack of authenticity of the dates displayed on the tape.

To conclude this argument, Det. Lawson submitted prejudicial tainted evidence of the audio and video surveillance that violated the States Federal Constitutional Obligation to disclose evidence favorable to the defense. *Brady vs. Maryland*. 373U.S.83(1963), which stemmed from a false testimony during the Petitioners trial, and the in-court, identification of the illegal video footage was the "fruit" of the scene of the crime. Det. Lawson joined together two separate audio surveillances and two separate video surveillances with prejudice and denied the Petitioner the right under *Brady* to review and have the original recordings examined by an expert before they were destroyed.

Petitioners next argument is the Prosecutor allowed and confirmed Det. Lawson's and Informant Teasley's false testimony that violated South Carolina Code Ann (16-9-10)(A)(1) "It is unlawful for a person to willfully give false, misleading, or incomplete testimony under oath in any court of record, judicial, administrative, or regulatory proceeding in this State," and S.C. Code Ann (16-9-30), " It is unlawful for a person to willfully and knowingly swear falsely in taking any oath required by law that is administered by a person directed or permitted by law to administer such oath".

The State witness Det. Lawson had continuously testified before the jurors that informant Teasley was arrested for possession of cocaine to persuade the jurors that the Petitioner was the higher-up dealer of an ongoing conspiracy of Teasley's arrest Trp. 25,26, and 44.

The Petitioner's defense was prejudiced by Det. Lawson's testimony of the following after discovered evidence:

1. Lawson's and Teasley's testimony on record was that Teasley's arrest was for distribution of cocaine, but March 6, 2002 he was arrested for methamphetamine Exhibit (A-1), Arrest warrant.
2. Lawson testified that Teasley had pending charges August 2, 2002, as the video footage was played before the jurors, but May 20, 2002, the informant charges were dismissed. Exhibit (A-2), Disposition sheet.
3. Teasley's crime laboratory report from the result of his arrest March 6, 2002, was No Controlled Substance Detected-March 25, 2002. Exhibit (A-3). Crime lab report.

Upon the conclusion of the State's testimony from Teasley to Prosecutor Joyce Monts and the Prosecutor's closing argument. Prosecutor Monts stated during trial of her and Teasley's previous meeting. Trp. 47. Prosecutor continued questioning the witness of his distribution of cocaine charge was not dismissed. Trp. 54. During closing arguments, Monts stated that Teasley could have been pursued a conviction on the distribution of cocaine charge. Trp. 74

To conclude this argument, the Prosecutor had willfully and knowingly withheld discovery from the Petitioner with deliberate indifference and the witnesses had intentionally misled the jurors.

The State witnesses misleading testimony had prejudiced the Petitioners defense. Berger vs. United States.295U.S.78.88 (1935).” It is as much [a prosecutor’s] duty to refrain from improper methods calculated to produce a wrongful conviction as it is to use every legitimate means to bring about a just one”.

The Petitioner’s constitutional rights were violated when the prosecutor, detective, and informant established the conscious disregard for the consequences of their actions once the “deliberate indifference” was committed during their false testimony and presentment of tainted evidence before the Petitioners jury trial.

Therefore, the Petitioner Prays before Your Honorable Court that his sentence and conviction to be Vacated for New Trial.

Nathaniel Glenn Jr., Pro Se

Nathaniel Glenn Jr. #303563

Broad River C.I.

4460 Broad River Rd.

Columbia, S.C. 29210

Sworn To And Subscribed before

Me this 11 day of
June, 2011.

Notary Public of South Carolina

My Commission Expires: _____

I submitted this motion to the Greenville County Clerk's Office before I hired Atty. Tommy Thomas, and my motion was ignored by the Court.

I declare under penalty of perjury that the above statement is true and correct.

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)
)
 The State of South Carolina,)
)
 v.)
)
 Nathaniel Glenn,)
)
 Defendant)
 _____)
)
)
)
)

IN THE COURT OF GENERAL SESSIONS
 THIRTEENTH JUDICIAL CIRCUIT


2002-GS-23-6529

**ORDER DENYING DEFENDANT'S
 MOTION FOR A NEW TRIAL**

2013 APR 10 AM 11:36
 COURT
 CLERK

THIS MATTER is before the Court on Defendant's motion for a new trial. Defendant's motion is made pursuant to Rule 60 of the South Carolina Rules of Civil Procedure. This Court finds that a motion made pursuant to Rule 60 is not the appropriate avenue for appeal as it applies to civil cases. The Defendant argues that evidence admitted at trial was tainted and that he should be granted a new trial pursuant to Rule 29 of the South Carolina Rules of Criminal Procedure. However, Rule 29 provides a basis for a new trial only when dispositive evidence has been discovered after a trial. The evidence in question in this case was admitted at trial. Further, Defendant has also previously filed two applications for Post-Conviction Relief which have been denied by Judges Welmaker and Hill.

April 9, 2013



 Letitia H. Verdin
 Circuit Judge

A Certified Copy
 B. Wilkerson
 of Court C.P. & G.S.
 Greenville County, SC
 4-10-13

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

IN THE COURT OF GENERAL SESSIONS
THIRTEENTH JUDICIAL CIRCUIT

H192003

State of South Carolina,)
Plaintiff)

ORDER

vs.)

2002-GS-23-6529


Nathaniel Glenn,)
Defendant)

FILED IN THE COURT
OF GENERAL SESSIONS
THIRTEENTH JUDICIAL CIRCUIT
GREENVILLE, SOUTH CAROLINA

2013 APR 23 AM 9:25

The Court has considered the motions submitted by Mr. Glenn wherein Mr. Glenn requests relief pursuant to Rule 29(b) of the South Carolina Rules of Criminal Procedure and Rule 60(b)(1)-(3), (5) of the South Carolina Rules of Civil Procedure. The Court finds that it is not appropriate to grant Mr. Glenn the sought-after relief. His request is hereby DENIED.

AND IT IS SO ORDERED.



The Honorable Edward W. Miller
Circuit Court Judge

Greenville, South Carolina
April 23, 2013

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

The State of South Carolina,

v.

Nathaniel Glenn,

Defendant

IN THE COURT OF GENERAL SESSIONS
THIRTEENTH JUDICIAL CIRCUIT

2002-GS-23-6529

H192003

**ORDER DENYING DEFENDANT'S
MOTION FOR A NEW TRIAL**

FILED CLERK OF COURT
PAUL F. WILKINSON
GREENVILLE, CO. SC

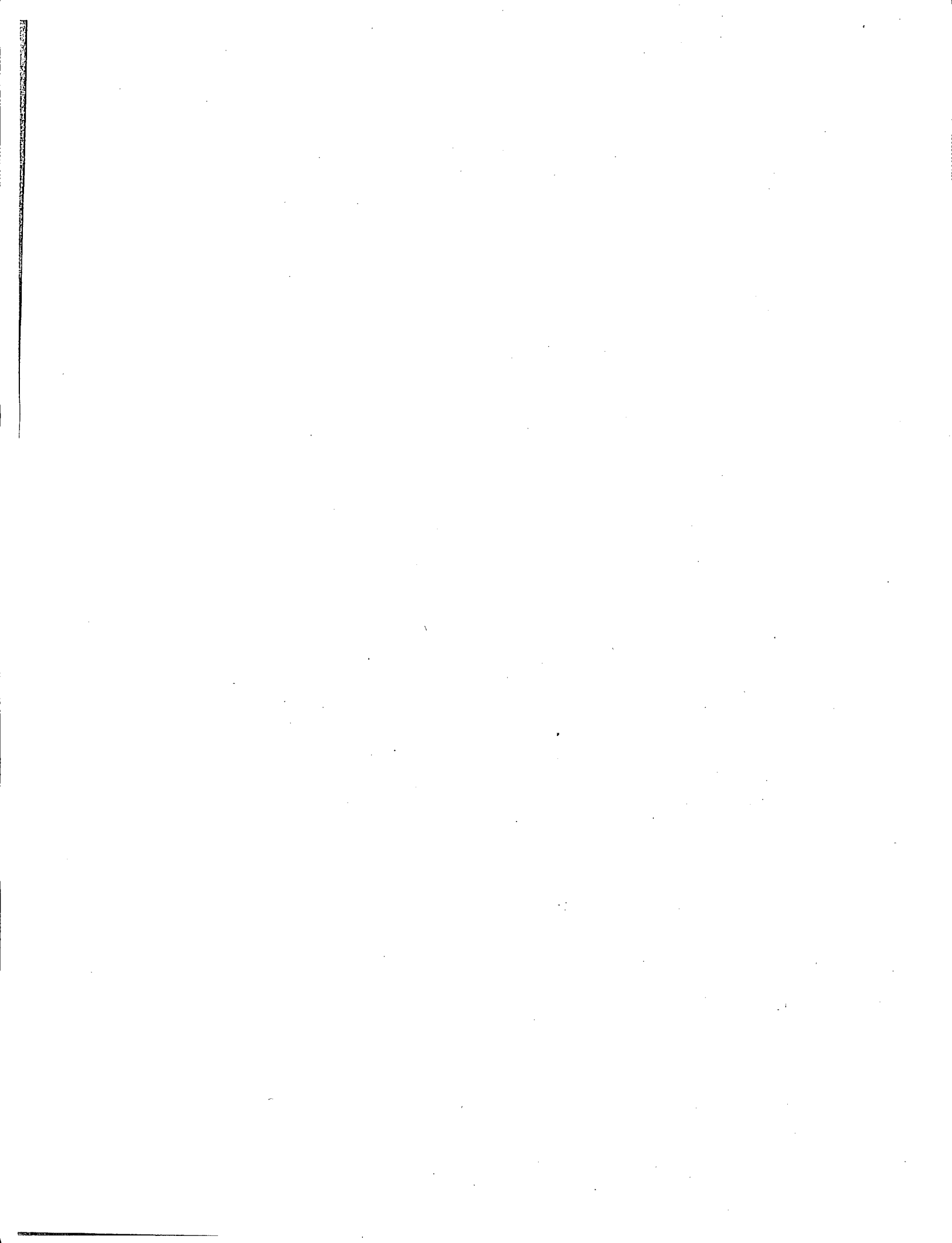
2013 JUL 25 PM 12: 17

THIS MATTER is before the Court on Defendant's motion to alter or amend this Court's previous Order Denying Defendant's Motion for a New Trial. This Court again denies Defendant's Motion due to Defendant's failure to file his appeal within 10 days as required by Rule 29, S.C.R. Crim.P. as well as his failure to provide this Court with new evidence not considered at trial.

July 10, 2013



Letitia H. Verdin
Circuit Judge



NOT INDICTED

General Sessions Docket
GS-23

Name: CHADWICK ANDRE TEASLEY Warrant/Ticket #: H149122
AKA: Date of Arrest: 3/6/2002
Address: 527 LINCOLN RD Date of Offense: 3/6/2002
Date Rec. by Clerk:

GREENVILLE, SC 00000-0000 Magistrate: 5833
SSN#: 250-31-0054 Counts: Code:
Sex: M Race: B
DOB: 6/9/1974
DL#: 007315284

Disposition Information

- 1. Transmitted to SOL & SCCA:
- 2. Disp Received by Clerk:
- 3. Date of Disposition:

MAY 2 2002

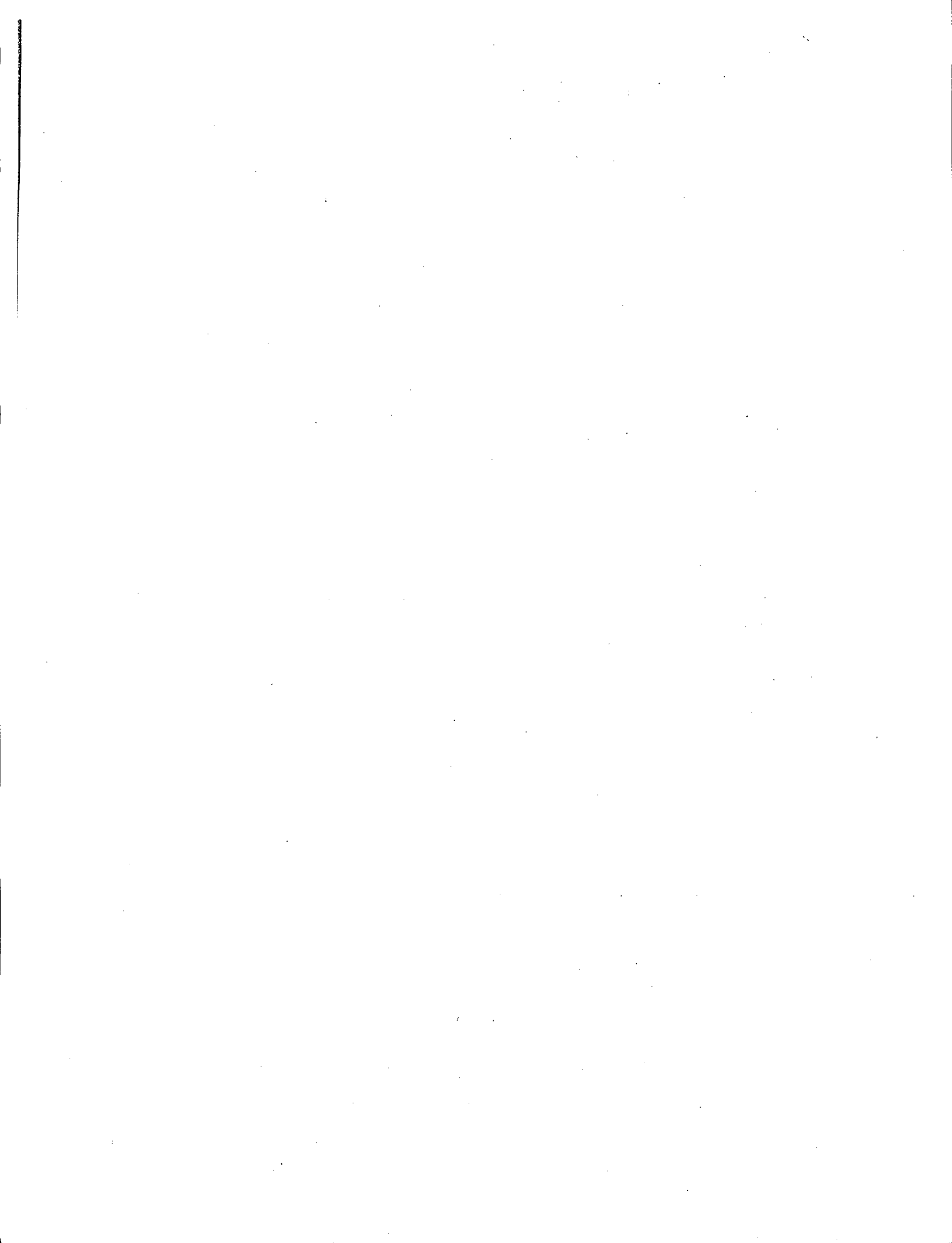
- Disposition: 1 Guilty Plea
 2 Trial Guilty
 3 Trial Not Guilty
 4 Dism/Nol Pros/Pros Ended Explain: *Lack of Evidence*
 5 PTI Explain: _____
 5 Judicial Commitment Explain: _____
 6 Judicial Dismissal
 7 Remanded Explain: _____
 8 Dismissed at Prelim
 8 No Bill
 9 Failure to Appear Explain: _____
 0 Other Explain: _____

Judge: _____ Court Reporter: _____

Defense Atty: _____ Solicitor: *TML*

Counts: _____ Code: _____

Sentence: _____



ARREST WARRANT 833
H-149122 68-02
STATE OF SOUTH CAROLINA
 County/ Municipality of
GREENVILLE

THE STATE 03-06-02
against
Chadwick Andre Teasley
Address: 527 Lincoln Rd. Taylors SC 29687
Phone: SSN: 252-31-0857
Sex M Race: A Height: 6'0" Weight: 200
DL State: DL#
DOB: 08-29-1974 Agency ORI#: 2-270000
Prosecuting Agency: GCSO
Prosecuting Officer: S. Rhea
Offense: P.W.I.D. Methamphetamine
Code/Ordinance No. 541-53-375 Offense Code:

This warrant is CERTIFIED FOR SERVICE in the
 County/ Municipality of
is to be arrested and brought before me to be
dealt with according to law.
The accused
Signature of Judge _____ (L.S.)

RETURN
A copy of this arrest warrant was delivered to
defendant Chadwick Andre Teasley
on 3-6-02
Wm. B. Brown 611 C-23
Signature of Constable/Law Enforcement Officer
RETURN WARRANT TO: Reid

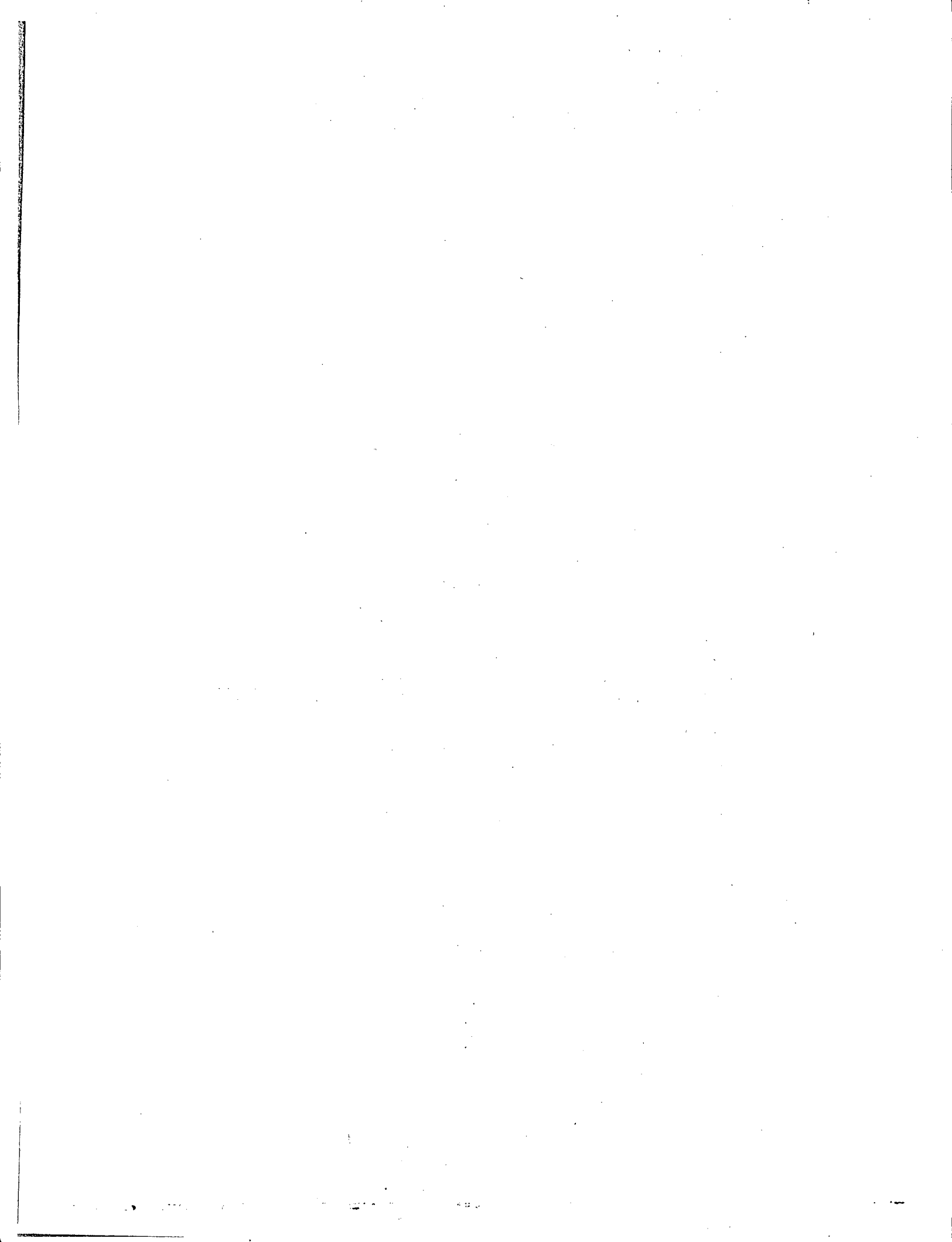
STATE OF SOUTH CAROLINA
 County/ Municipality of
GREENVILLE
Personally appeared before me the affiant J. Campagnone for S. Rhea who
being duly sworn deposes and says that defendant Chadwick Andre Teasley
did within this county and state on 03-06-02 violate the criminal laws of the
State of South Carolina (or ordinance of County/ Municipality of Greenville)
in the following particulars:

DESCRIPTION OF OFFENSE: P.W.I.D. Methamphetamine
I further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:

THE DEFENDANT CHADWICK ANDRE TEASLEY WAS FOUND TO BE
IN POSSESSION OF APPROXIMATELY 8.3 GRAMS OF A WHITE POWDER
SUBSTANCE FIELD TESTED POSITIVE FOR METHAMPHETAMINE. THIS
INCIDENT OCCURRED IN THE PARTING LOT OF PARKER BIOS. #741
HOUSE #11 WHICH IS LOCATED IN GREENVILLE COUNTY.
Sworn to and subscribed before me on 3-6-2002
Signature of Affiant [Signature]
Affiant's Address 4066E ST. CARVILLE SC 29601
Affiant's Telephone 271-5210

STATE OF SOUTH CAROLINA
 County/ Municipality of
GREENVILLE
TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:
It appearing from this affidavit that there are reasonable grounds to believe
on 03-06-02 defendant Chadwick Andre Teasley
did violate the criminal laws of the State of South Carolina (or ordinance of
 County/ Municipality of Greenville) as set forth below:

DESCRIPTION OF OFFENSE: P.W.I.D. Methamphetamine
Now, therefore, you are empowered and directed to arrest the said defendant and bring him or her before
me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the
defendant at the time of its execution, or as soon thereafter as is practicable.
Signature of Issuing Judge [Signature] (L.S.)
Judge's Address _____
Judge's Telephone _____
Issuing Court: Magistrate Municipal Circuit



STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)
STATE OF SOUTH CAROLINA,)
V.)
NATHANIEL J. GLENN,)
DEFENDANT,)
_____)

IN THE COURT OF GENERAL SESSIONS
DOCKET NO.: 2002-GS-23-6529
MOTION FOR NEW TRIAL
BASED ON AFTER-DISCOVERED
EVIDENCE, PURSUANT TO RULE
29 (b), SCRCrimP & SCRCP 60 (b)
(1), (3), & (5).

COMES NOW THE DEFENDANT, AND MOVES BEFORE THIS COURT FOR A NEW TRIAL BASED UPON AFTER-DISCOVERED EVIDENCE PURSUANT TO RULE 29 (b), SCRCrimP, AND SCRCP 60 (b), (1), (3), & (5). THE DEFENDANT SUBMITS THAT THE CLERK'S FILES AND ADMISSIONS BY THE SOLICITOR'S OFFICE, THE GREENVILLE COUNTY SHERIFF DEPARTMENT, AND THE STATE'S CONFIDENTIAL INFORMANT ON JULY 13TH, 2004 IN FRONT OF THE HONORABLE EDWARD W. MILLER, JUDGE, AMOUNTS TO AFTER-DISCOVERED EVIDENCE UNDER RULE 29 (b), SCRCrimP, AND SCRCP 60 (b), (1), (3), & (5) TO INCLUDE A DUE PROCESS VIOLATION UNDER BOTH THE STATE AND FEDERAL CONSTITUTION, AND STATE V. SPANN, 334 S.C. 618, 513 S.E. 2D 98 (1999).

PROCEDURAL HISTORY

THE DEFENDANT GLENN IS PRESENTLY CONFINED IN THE SOUTH CAROLINA DEPARTMENT OF CORRECTIONS PURSUANT TO ORDERS OF COMMITMENT OF THE CLERK OF COURT OF GREENVILLE COUNTY. GLENN WAS INDICTED FOR TRAFFICKING COCAINE, INDICTMENT NUMBER 02-6529. IT ALLEGES THAT NATHANIEL J. GLENN DID IN GREENVILLE COUNTY ON OR ABOUT AUGUST 2ND OF 2002, KNOWINGLY SELL, MANUFACTURE, DELIVER OR BRING INTO THE STATE OF SOUTH CAROLINA OR DID KNOWINGLY PROVIDE FINANCIAL ASSISTANCE OR OTHERWISE AIDE, ABET OR CONSPIRE TO SELL, MANUFACTURE, DELIVER OR BRING INTO THE STATE, OR WAS KNOWINGLY IN ACTUAL OR CONSTRUCTIVE POSSESSION OF MORE THAN 10 GRAMS OF COCAINE. HE WAS REPRESENTED BY SKIP GOLDSMITH, ESQUIRE. ON JULY 13TH, 2004 GLENN PROCEEDED TO A JURY TRIAL. GLENN WAS FOUND GUILTY OF TRAFFICKING IN COCAINE. GLENN WAS SENTENCED TO CONFINEMENT FOR (27) YEARS.

A NOTICE OF APPEAL WAS FILED ON THE DEFENDANT'S BEHALF AT THE SOUTH CAROLINA COURT OF APPEALS. THE APPLICANT SUBSEQUENTLY CHOSE TO WITHDRAW HIS APPEAL. THE COURT ISSUED THE ORDER OF DISMISSAL AND REMITTITUR ON JUNE 23, 2005.

GLENN FILED AN APPLICATION FOR POST CONVICTION RELIEF (PCR) ON FEBRUARY 20, 2006 (DOCKET NO. 2006-CP-23-1230). THE STATES MADE ITS RETURN ON OR ABOUT MAY 2, 2006. THE APPLICANT FILED A SEBSEQUENT AMENDMENT TO HIS APPLICATION- DATED JUNE 26, 2006- IN WHICH HE ALLEGED SEVERAL INSTANCES OF INEFFECTIVE OF TRIAL COUNSEL. SEE ATTACHED EXHIBIT "A" ORDER OF DISMISSAL.

ON OR ABOUT JANUARY 10, 2008 DEFENDANT ATTORNEY FILED A MOTION TO ALTER OR AMEND THE JUDGMENT WHICH WAS DENIED ON JANUARY 18, 2008 BY THE HONORABLE G. EDWARD WELMAKER, JUDGE FOR THE THIRTEENTH JUDICIAL CIRCUIT.

A NOTICE OF APPEAL WAS FILED ON JANUARY 24, 2008 WITH THE SOUTH CAROLINA SUPREME COURT. THE SOUTH CAROLINA SUPREME COURT ISSUED ITS ORDERS ON MAY 28, 2009. THE REMITTITUR FOLLOWED ON JUNE 15, 2009.

ON AUGUST 18, 2009 DEFENDANT FILED A WRIT OF HABEAS CORPUS RAISING FOUR GROUNDS FOR RELIEF. ON JANUARY 13, 2010, THE RESPONDENT FILED A MOTION FOR SUMMARY JUDGMENT. BY ORDER FILED JANUARY 14, 2010, PETITIONER WAS ADVISED OF SUMMARY JUDGMENT DISMISSAL PROCEDURE AND THE POSSIBLE CONSEQUENCES IF HE FAILED TO ADEQUATELY RESPOND TO THE MOTION. PETITIONER FAILED TO RESPOND TO THE MOTION AND THE COURT FILED N ORDER ON FEBRUARY 24, 2010, GIVING HIM ANOTHER OPPORTUNITY, THROUGH MARCH 22, 2010, FILE HIS RESPONSE. ON APRIL 5, 2010, THE PETITIONER MOVED FOR AN EXTENSION OF TIME, WHICH WAS GRANTED THROUGH APRIL 22, 2010. THE PETITIONER FILED HIS RESPONSE IN OPPOSITION TO THE MOTION FOR SUMMARY JUDGMENT ON APRIL 5, 2010, AND SUBMITTED ADDITIONAL ATTACHMENT IN SUPPORT OF HIS RESPONSE ON APRIL 9, MAY 14, AND JUNE 8, 2010. ON MAY 28, 2010, HE FILED AN AFFIDAVIT IS SUPPORT OF HIS RESPONSE, AND ON JUNE 28, 2010, HE FILED A "MOTION OF ACTUAL INNOCENCE".

ON JULY 22, 2010, THE HONORABLE KEVIN F. McDONALD, UNITED STATES MAGISTRATE JUDGE RECOMMENDED THAT THE RESPONDENT'S MOTION FOR SUMMARY JUDGMENT (DOC 23) BE GRANTED. THAT RECOMMENDATION WAS GRANTED AND THE APPEALED TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT, ON AUGUST 18, 2009. THE DECISION OF THAT COURT IS PENDING AS OF THIS FILING.

IN THE INSTANT MOTION, THE DEFENDANT HAVE MOVED PURSUANT TO THE ABOVE LEGAL AUTHORITIES AND CASE LAW. THAT STATE AND COUNTY LAW ENFORCEMENT HAVE ENGAGED IN ACTIONS TAKEN AS A WHOLE AMOUNTS TO A DENIAL OF EQUAL PROTECTION OF THE LAW. THAT SUCH VIOLATIONS OCCURED DURING THE COURSE OF THE DEFENDANT'S JUDICIAL PROCESS AND DENIED HIM DUE PROCESS. SEE WASHINGTON V. STATE, 478 S.E. 2D 833 (SC 1996).

THE HEREIN ALLEGATION'S, PRESENTS "UNIQUE" COMBINATION OF FACTS AND UNUSUAL CIRCUMSTANCES WHICH WARRANTS REVIEW. THUS, DEFENDANT SHOULD NOT BE PUNISHED FOR THE ACTIONS AND INACTIONS OF HIS APPOINTED ATTORNEY'S THROUGHOUT HIS JUDICIAL PROCESS. IT IS GENERALLY PREFERRED THAT A BLAMELESS PARTY NOT BE DISADVANTAGED (AS HERE) BY THE PROCEDURAL ERRORS OR NEGLECT OF HIS/HER ATTORNEY. HARRIS V. U.S. RR RETIREMENT BD., 198 F3D 139 (4TH CIR. 1999).

THE ALLEGATION'S SET FORTHBELOW PRESENTS A PRIMA FACIE VIOLATION OF DEFENDANT'S CONSTITUTIONAL RIGHTS. ROGERS V. STATE, 261 S.C. 288, 199 S.E. 2D 761 (1973). THE ALLEGATIONS IN THE MOTION MUST BE ACCEPTED AS TRUE UNLESS AND UNTIL SUCCESSFULLY REFUTED. BLANDSHAW V. STATE, 245 S.C. 385, 140 S.E. 2D 784 (1965).

ON THE MATTER SUB JUDICE, THE DEFENDANT IS ALLEGING AFTER-DISCOVERED EVIDENCE THAT WARRANTS A NEW TRIAL AND/ OR VACATION OF HIS CONVICTION. TO PREVAIL ON THIS CLAIM THE DEFENDANT "MUST SHOW THAT THE AFTER-DISCOVERED EVIDENCE: (1) IS SUCH THAT IT WOULD PROBABLY CHANGE THE RESULT IF A NEW TRIAL WERE GRANTED; (2) HAS BEEN DISCOVERED SINCE THE TRIAL; (3) COULD NOT IN THE EXERCISE OF DUE DILIGENCE BEEN DISCOVERED PRIOR TO TRIAL; (4) IS MATERIAL; AND (5) IS NOT MERELY CUMULATIVE OR IMPEACHING". STATE V. NEEDS, 333 S.C. 134, 508 S.E. 2D 857 (1998).

ARGUMENT

BY WAY OF THIS MOTION, THE DEFENDANT IS ALLEGING AFTER-DISCOVERED EVIDENCE DUE TO THE CONDUCT OF STATE OFFICIALS AND THE STATE'S CHIEF INFORMANT. THAT SUCH CONDUCT AMOUNTS TO FRAUD UPON THE COURT, DENIAL OF A FAIR TRIAL AND PERJURY. SEE WASHINGTON V. STATE, 324 S.C. 232, 487 S.E. 2D 883 (1996); GIGLIO, 405 U.S. AT 154-55, 92 S.CT. 763. 478 833

THE DEFENDANT'S TRIAL TRANSCRIPT'S BEARS OUT THE ALLEGATION'S BEFORE THE COURT ARE SUBMITTED AS AN EXHIBIT IN SUPPORT THEREOF. EACH NUMBERED PAGE INDICATED SHOWS WHERE THE PROSECTOR, INFORMANT, AND POLICE OFFICER'S COMMITTED PERJURY AND FRAUD UPON THE COURT. WHERE THE LAW HOLDS: WHERE THE PROSECTOR FAILED TO CORRECT THE WITNESS PERJURED TESTIMONY, ALTHOUGH HE CLEARLY (AS HERE) KNEW IT TO BE FALSE. THE SUPREME COURT HELD THAT THE FALSE TESTIMONY USED BY THE STATE IN SECURING THE CONVICTION MAY HAVE HAD AN EFFECT ON THE OUTCOME OF THE TRIAL, AND ACCORDINGLY, REVERSED THE DEFENDANT'S CONVICTION. ID. AT 272, 79 S.CT. 1173, NAPUE V. ILLINOIS, IN THE INSTANT CASE, THE PROSECUTOR FAILED TO CORRECT THE PERJURY AND REPEATED THE WITNESS FALSEHOOD IN HIS SUMMATION. (SEE TRANSCRIPT ATTACHED). THE SUPREME COURT REVERSED THE DEFENDANT'S CONVICTION BECAUSE THERE WAS REASONABLE LIKEHOOD THAT THE PROSECUTOR'S KNOWING USE OF PERJURY ON AN ISSUE SO RELEVANT TO THE WITNESS' CREDIBILITY AFFECTED THE JUDGMENT OF THE JURY. GIGLIO, 405 U.S. AT 154-55, 92 S.CT. 763. THUS, THE GRANT OF A NEW TRIAL BASED UPON A NAPUE VIOLATION IS PROPER ONLY IF (AS HERE) (1) THE STATEMENT IS QUESTION ARE SHOWN TO BE ACTUALLY FALSE; (2) (AS HERE) THE PROSECUTION KNEW THAT THEY WERE FALSE; AND (3) (AS HERE) THE STATEMENTS WERE MATERIAL. UNITED STATES V. BLACKBURN, 9 F.3D 353 357 (5TH CIR. 1993). UNITED STATES V. O'KEEFE, 128 F.3D 885, 893 (5TH CIR. 1997).

THEREFORE, THE DEFENDANT URGES THIS COURT TO CONSIDER HIS CLAIM OF AFTER DISCOVERED EVIDENCE AND THE FOLLOWING TESTIMONY AND EXHIBIT'S THAT ARE BEING PRESENTED AND COULD NOT BE PRESENTED PRIOR TO TRIAL AND SENTENCING: 1)INFORMANT CHADWICK TEASLEY, ARREST REPORT DRUG ANALYSIS FINDINGS; INCIDENT'S REPORT'S OF DET. BOBBY CARIAS AND DET. MELISSA LAWSON, CONCERNING THE AMOUNTS OF FUNDS USED; INCIDENT REPORTS OF THE TIME FRAMES OF THE ALLEGED DRUG MEETING. THE DEFENDANT SUBMITS IT WOULD AMOUNT TO "A DENIAL OF FUNDAMENTAL FAIRNESS SHOCKING TO THE JUDICIAL SENSE OF JUSTICE" IF THIS COURT FAILS TO CONSIDER AND ACT ON THESE ISSUES OF AFTER-DISCOVERED EVIDENCE. SEE JOHNSON V. CATOE, 345 S.C. 389, 401, 548 S.E. 2D 587, 593 (2001) (WALLER, J., DESENTING) (QUOTING BULTER V. STATE, 302 S.C. 466, 468, 397 S.E. 2D 87, 88 (1990)).

CONCLUSION

BASED UPON THE FOREGOING DEFENDANT MOVES THIS HONORABLE COURT TO CONDUCT A HEARING TO ASCERTAIN THE HEREIN ALLEGATION'S AND FOR SUCH OTHER AND FURTHER RELIEF, THE COURT DEEMS JUST, FAIR AND PROPER.

DATED: May 5, 2011
COLUMBIA, SOUTH CAROLINA

RESPECTFULLY SUBMITTED,
S/ Nathaniel J. Gleen
NATHANIEL J. GLEEN, #303563
BRCI-CONGAREE #104
4460 BROAD RIVER ROAD
COLUMBIA, S.C. 29210

CERTIFICATE OF MAILING

I HEREBY CERTIFY THAT I MAILED MY MOTION FOR NEW TRIAL TO THE BELOW LISTED PERSON. BY PLACING SAME IN THE U.S. MAIL AND ADDRESSED AS FOLLOWS:

CLERK OF COURT
GREENVILLE COUNTY COURTHOUSE
305 MAIL STREET
GREENVILLE, S.C. 29601

s/ *Nathaniel J. Glenn*
NATHANIEL J. GLENN, #303563
BRCI-CONGAREE #104
4460 BROAD RIVER ROAD
COLUMBIA, S.C. 29210

SWORN TO AND BEFORE ME THIS

9th DAY OF May, 2011

Susan H. Frye (L.S.)

NOTARY PUBLIC FOR S.C.

My Commission Expires

MY COMMISSION EXPIRES: March 5, 2018

2011 MAY 19 AM 10:16
CLERK OF COURT
GREENVILLE COUNTY

STATE OF SOUTH CAROLINA)

IN THE COURT OF GENERAL SESSIONS

COUNTY OF GREENVILLE)

DOCKET NO.: 2002-GS-23-6529

STATE OF SOUTH CAROLINA,)

AMENDED

Plaintiff,)

MOTION FOR NEW TRIAL BASED ON
AFTER-DISCOVERED EVIDENCE

v.)

PURSUANT TO RULE 29 (b), SCRCrimp & SCRPC 60
SCRPC 60 (b) (1), (3) & (5)

Nathanial Glenn,)

Defendant.)

Comes Now the Defendant, and moves before this Court for a new trial based upon after-discovered evidence pursuant to Rule 29 (b), SCRCrimp, and SCRPC 60 (b), (1), (3), & (5).

PROCEDURAL HISTORY

The Defendant is currently incarcerated in the South Carolina Department of Corrections pursuant to Orders of commitment of the Clerk of Court of Greenville County. The Defendant was indicted for trafficking cocaine, (02-GS-23-6529). The Indictment alleges that the Defendant did, in Greenville County, on or about August 2, 2002, knowingly sell, manufacture, deliver or bring into the State of South Carolina or did knowingly provide financial assistance or otherwise aide, abet or conspire to sell, Manufacture, deliver or bring into the State, or was knowingly in actual or constructive possession of more than 10 grams of cocaine. The Defendant was represented by Skip Goldsmith, Esq. On July 13, 2004, the Defendant proceeded with a jury trial and was found guilty of Trafficking in Cocaine and sentenced to twenty seven (27) years.

A Notice of Appeal was filed on the Defendant's behalf with the South Carolina Court of Appeals. Mr. Glenn subsequently chose to withdraw this Appeal. The Court issued an Order of Dismissal and Remittitur on June 23, 2005.

The Defendant filed an Application for Post Conviction Relief on February 20, 2006

~~(Docket No. 2006-CP-23-1230). The State made its Return on or about May 2, 2006. The~~

Applicant filed a subsequent Amendment to his Application dated June 26, 2006. This matter was dismissed by the Court.

On or about January 10, 2008, Defendant's attorney filed a Motion to Alter or Amend the Judgment which was denied on January 18, 2008 by the Honorable G. Edward Welmaker, Judge of the Thirteenth Judicial Circuit.

A Notice of Appeal was filed on January 24, 2008 with the South Carolina Supreme Court. The South Carolina Supreme Court issued its Order on May 28, 2009. The Remittitur followed on June 15, 2009.

On August 18, 2009, Defendant filed a Writ of Habeas Corpus raising four grounds for relief. On January 13, 2010, the respondent filed a Motion for Summary Judgment. By Order filed January 14, 2010, Petitioner was advised of Summary Judgment Dismissal procedure and the possible consequences if he failed to adequately respond to the Motion. Petitioner failed to respond to the Motion and the Court filed an order on February 24, 2010, giving him another opportunity, through March 22, 2010 to file his response. On April 5, 2010, the Petitioner moved for an extension of time, which was granted through April 22, 2010. The Petitioner filed his response in opposition to the Motion for Summary Judgment on April 5, 2010 and submitted additional attachments in support of his Response on April 9, 2010, May 14, 2010 and June 8, 2010. On May 28, 2010, he filed an Affidavit in support of his response and on June 28, 2010.

On July 22, 2010, the Honorable Kevin F. McDonald, United States Magistrate Judge recommended that the Respondent's Motion for Summary Judgment (DOC 23) be granted. The recommendation was granted and the appeal to the United States Court of Appeals for the Fourth

Circuit, on August 18, 2009. On April 26, 2011, Defendant's appeal was dismissed by

~~unpublished per-curiam opinion and a Certificate of Appealability was denied.~~

Argument

The Defendant was indicted for trafficking cocaine 10g-28g (2002-GS-23-6388) as a result of an alleged drug purchase on July 16, 2002. The Defendant was indicted for trafficking cocaine 10g-28g (2002-GS-23-6529) as a result of an alleged drug purchase on August 2, 2002. Both alleged drug purchases on July 16th and August 2nd were captured on an 8mm video camera by Detectives Bobby Carias and Melissa Lawson. It appears the July 16th purchase was captured by a sony minidisc and a TDK 8mm tape (case no. 2-02-60712); and the August 2nd purchase was captured by a sony minidisc, a TDK 8mm tape, and a sony audio cassette (case no. 2-02-65041).

Upon information and belief, Assistant Solicitor Joyce Monts provided the Defendant's attorney with a videotape of the Defendant's two (2) pending drug charges on or about March 4, 2004. It appears that Detective Melissa Lawson from the Greenville City Police Department transferred and combined the two (2) individual 8mm video recordings onto a single VHS videotape for play on a VCR. The Defendant proceeded to trial on July 13, 2004 solely on the charge arising from the alleged drug purchase on August 2, 2002; however, the consolidated VHS videotape was introduced without objection and played for the Jury at trial. The charge arising from the July 16th drug purchase was nolle prossed on July 26, 2004.

Due to the Defendant's location in the Courtroom during the trial, the Defendant could not see the publication of the consolidated VHS videotape and therefore completely unaware that both drug purchases (July 16th and August 2nd) were shown to the Jury.

It was only at a later date through the Freedom of Information Act that the Defendant discovered the consolidated VHS videotape had been transposed and that the two (2) original individual TDK 8mm videotapes no longer existed. The Defendant is informed and believes that the altering and combining of the two (2) TDK 8mm videotapes was an unlawful alteration and as such would have rendered the consolidated VHS videotape as inadmissible. Moreover, the Defendant was clearly prejudiced when the Jury was shown video of the July 16th alleged drug purchase as the Defendant was not on trial for said charge.

“To prove the content of a writing, recording, or photograph, the original writing, recording, or photograph is required, except as otherwise provided in these rules or by statute.” Rule 1002, SCRE. “The original is not required, and other evidence of the contents of a writing, recording, or photograph is admissible if- [] All originals are lost or have been destroyed, unless the proponent lost or destroyed them in bad faith.” Rule 1004, SCRE.

An “original” of a writing or recording is the writing or recording itself or any counterpart intended to have the same effect by a person executing or issuing it. An “original” of a photograph includes the negative or any print therefrom. If data are stored in a computer or similar device, any printout or other output readable by sight, shown to reflect the data accurately, is an “original.” Rule 1001(3), SCRE. Further, Rule 1001 defines a duplicate as “a counterpart produced by the same impression as the original, or from the same matrix, or by means of photography, including enlargements and miniatures, or by mechanical or electronic re-recording, or by chemical reproduction, or by other equivalent techniques which accurately produces the original.” Rule 1001(4), SCRE. Rule 1003, SCRE states that “[a] duplicate is admissible to the same extent as an original unless (1) a genuine question is raised as to the authenticity of the original or (2) in the circumstances it would be unfair to admit the duplicate in

lieu of the original.” The Defendant submits that at the time of his trial, the original TDK 8mm videotapes of the July 16th and August 2nd alleged drug purchases were available. The consolidated VHS videotape does not constitute an “original” as defined by the Rules, nor does it qualify as a “duplicate.”

The Defendant believes that the chain of custody for the consolidated VHS videotape was not and cannot be established. “Proof of chain of custody need not negate all possibility of tampering so long as the chain of possession is complete.” State v. Carter, 344 S.C. 419, 544 S.E.2d 835 (2001). “In applying this rule, we have found evidence inadmissible only where there is a missing link in the chain of possession because the identity of those who handled the [substance] was not established at least as far as practicable. See id.”

“Evidence is still required as to how the item was obtained and how it was handled to ensure that it is, in fact, what it is purported to be.” State v. Hatcher, 392 S.C. 86, 708 S.E.2d 750 (2011). In Hatcher, the South Carolina Supreme Court considered the following factors in reviewing the chain of custody: the nature of the article, the circumstances surrounding the preservation and custody of it, and the likelihood of intermeddlers tampering with it.

The Defendant submits that consolidating the two (2) individual videos of the July 16th and August 2nd alleged drug purchases into a single video and shown to the Jury at trial where the Defendant is being tried for one of the alleged drug purchase is highly prejudicial and improper. The Defendant believes that the consolidation of the videos is tantamount to tampering with the original 8mm TDK videotapes. There does not appear to be any testimony and/or evidence as to when, where, and how the consolidated VHS videotape was made.

Conclusion

~~Wherefore, the above-described after-discovered evidence above has never been~~
presented nor heard by the Court. The Defendant respectfully requests a hearing be held on this
motion.

Respectfully submitted,

Tommy A. Thomas
Attorney for Defendant
P.O. Box 88
Irmo, SC 29063
(803) 732-5507

December 12, 2012.

State of South Carolina
In The Appellate Court

The State, - - - - - Respondent,

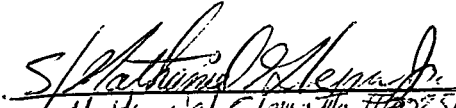
vs.

Nathaniel Glenn Jr. - - - Appellant.

Certificate of Service

Case No: 2013-000919

The undersigned hereby certifies that a true copy of his Initial Brief in the above referenced case number has been served upon the Honorable Jenny A. Kitchings, Clerk and the request to forward the enclosed documents to Salley W. Elliott, Esquire by depositing a copy of it in the U.S. Mail, postage prepaid on the date of January 15, 2014.


Nathaniel Glenn Jr. #205563
Lee, C. J.
990 Wisacky Hwy.
Bishopville, S.C. 29010

Salley W. Elliott, Esq.
Assistant Atty. Gen.
P.O. Box 11549

RECEIVED Columbia, S.C. 29211

JAN 22 2014

SC Court of Appeals